



HEALTH AFFAIRS



Uses and Disclosures

HIPAA Training: Summer Sessions

TMA Privacy Office

Agenda

- Definition
- Legal and Regulatory Requirements
- Minimum Necessary Principle
- Permitted Uses and Disclosures
- Other Uses and Disclosures
- Accounting for Disclosures
- Overview of Draft Policy

Training Objectives

- Upon completion of this course, you will be able to:
 - Define Uses and Disclosures
 - Identify the legal and regulatory requirements
 - Explain requirements of the Minimum Necessary Principle
 - Identify Permitted Uses and Disclosures
 - Describe the special requirements for Psychotherapy Notes
 - Define Incidental Uses and Disclosures
 - Explain the process and requirements for Accounting of Disclosures
 - Describe the contents of the draft policy

Definition

Use and Disclosure

- **Use** is the sharing of information within an entity
- **Disclosure** is the sharing or release of PHI in any manner outside the covered entity
- HIPAA requires the use and disclosure of PHI in three instances only:
 - Treatment, payment, and healthcare operations
 - To the individual when requested
 - To the HHS Secretary to determine compliance
- Other uses and disclosures are permitted subject to the requirements of the Rule (without the patient's opportunity to agree or object)

Legal and Regulatory Requirements

Legal and Regulatory Requirements

Objectives

Upon completion of this lesson, you will identify

- Privacy Act requirements
- HIPAA Privacy Rule requirements
- DoD Regulation requirements
- Service requirements

Legal and Regulatory Requirements

Privacy Act

- Defines responsibilities for implementation
- Assures personal information about individuals collected by Federal agencies is limited to that which is legally authorized and necessary
- Personal information is maintained in a manner which precludes unwarranted intrusions upon individual privacy

Legal and Regulatory Requirements

Privacy Act

- Responsibilities
 - Each agency head shall establish and maintain procedures consistent with the Act
 - Prepare and publish a public notice of the existence and character of those systems consistent with guidance by GSA
 - Establish reasonable administrative, technical, and physical safeguards
 - Maintain an accounting of all disclosures of information from systems of records
 - Permit individuals to have access to records pertaining to themselves
 - Permit individuals to request that such record be amended

Legal and Regulatory Requirements

HIPAA Privacy Rule

- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
 - Overlaps with the Privacy Act of 1974
 - Individuals have the right to receive an accounting of disclosures of PHI made by the covered entity with exceptions of
 - Treatment
 - Payment
 - Healthcare operations
 - The accounting must include:
 - Disclosure of PHI that occurred during the six years or prior to the date of the request for an accounting

DoD Health Information Privacy Regulation 6025-18R

- Implements HIPAA requirements throughout DoD
 - A covered entity (including a covered entity not part of or affiliated with the DoD) may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of the military mission

DoD Health Information Privacy Regulation 6025-18R

- Appropriate Military Command Authorities
 - All Commanders who exercise authority over an individual who is a member of the Armed Forces
 - A person designated by a Commander to receive PHI
 - The Secretary of Defense
 - The Secretary of the Military Department for the Armed Forces for which the individual is a member
 - The Secretary of Homeland Security has command authority of a member of the Coast Guard

DoD Health Information Privacy Regulation 6025-18R

- Purposes for which PHI may be used or disclosed to the military commander
 - Determine member's fitness for duty
 - Determine member's fitness to perform mission, assignment, order, or duty, including compliance with any actions required as a precondition to performance of such mission, assignment, order or duty
 - To carry out any other activity necessary to the proper execution of the mission of the Armed Forces

Legal and Regulatory Requirements

Service Requirements

- Air Force
 - Air Force Instruction 41-210
 - Patient Administration Functions
- Navy
 - SECNAV Instruction 52115D
 - Department of Navy Privacy Act Program
- Army
 - Army Regulation 40-66
 - Medical Record Administration and Health Care Documentation

Legal and Regulatory Requirements

Summary

- You should be able to identify
 - Privacy Act requirements
 - HIPAA Privacy Rule requirements
 - DoD Regulation requirements
 - Service requirements

Minimum Necessary Principle

Minimum Necessary Principle

Objectives

Upon completion of this lesson, you will be able to

- Define the Minimum Necessary Principle
- Understand the applicability of requirements of the Minimum Necessary Principle when applied to various request and disclosures

Minimum Necessary Principle

Definition

- Requires covered entities to take reasonable steps to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose
- Implementing the Standard
 - Identify people or groups of people in the workforce who need access to PHI to do their work
 - Further identify the classes of PHI those individuals need to access
 - Create policies and procedures for **routine** disclosures of PHI so that the information released is limited to the minimum to achieve the purpose of the disclosure
 - Limit the PHI disclosed in Non-routine Disclosures by developing a criteria
 - Review requests for PHI on an individual basis against the criteria

Minimum Necessary Principle

Requirements (1 of 3)

Disclosure or Request	Requirement
Routine or recurring disclosure	Covered entity must implement policies and procedures that limit disclosure to the minimum amount of PHI needed to accomplish purpose
Disclosure to a public official permitted by the Privacy Rule	Disclose amount requested if permitted and public official represents it is the minimum necessary
Disclosure to another CE	Disclose amount requested
Disclosure to professionals who are members of own workforce or a business associate	Disclose amount requested if professional represents it is the minimum necessary

Minimum Necessary Principle

Requirements (2 of 3)

Disclosure or Request	Requirement
Disclosures for research	Disclose amount requested if presented with paperwork that complies with requirements under uses and disclosures for research involving minimal risk
All other disclosures	Covered entity must develop criteria to limit disclosures to the minimum necessary to accomplish the purpose and use the criteria to review each disclosure in an individual basis
Request PHI from another covered entity	Covered entity will request only that amount of PHI needed to reasonably accomplish the purpose

Minimum Necessary Principle

Requirements (3 of 3)

Disclosure or Request	Requirement
Routine and recurring requests	Covered entity will implement policies and procedures that limit the amount of PHI requested to the minimum necessary to accomplish the purpose
All other requests	Covered entity must develop criteria to limit the request for PHI to only that amount needed to reasonably accomplish the purpose and use the criteria to review each request on an individual basis
Role-based access limits	Categorize users by their “need to know” profile and align with IT systems

Minimum Necessary Principle

Summary

You should be able to

- Define the Minimum Necessary Principle
- Understand the applicability of requirements of the Minimum Necessary Principle when applied to various request and disclosures

Permitted Uses & Disclosures

Permitted Uses & Disclosures

Objectives

- Upon completion of the lesson, you should be able to
 - Identify the 14 uses and disclosures that are allowed under HIPAA without a patient consent
 - Explain the requirements for those individual uses and disclosures

Permitted Uses & Disclosures

HIPAA Requirements

For the permitted uses and disclosures listed below, a patient's opportunity to agree or object is not required

1. As required by law
2. Avert serious threats to health or safety
3. Specialized government functions/ military provisions
4. Judicial and administrative proceedings
5. Medical facility patient directories
6. Cadaver organ, eye or tissue donation purposes
7. Victims of abuse, neglect or domestic violence
8. Inmates in correctional institutions or in custody
9. Workers' compensation
10. Research purposes
11. Public health activities
12. Health oversight activities
13. About decedents
14. Law enforcement purposes

Permitted Uses & Disclosures

As Required By Law

- A Covered Entity may use or disclose PHI to the extent that such use/disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such

Avert Serious Threats to Health or Safety

- PHI may be disclosed when
 - The covered entity in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, to identify or apprehend an individual who has made a statement admitting participation in a violent crime
- Apprehension of escaped convicts
 - The covered entity in good faith believes the disclosure is necessary for law enforcement authorities to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody

Specialized Government Functions

- Military activities
- Veterans' activities
- National security and intelligence activities
- Protective services for the President
- Medical suitability determinations
- Correctional institutions
- Government programs providing public benefits

Permitted Uses & Disclosures

Military Provisions

- Covered entities may disclose PHI of Service members to Military Command Authorities
 - For determination of a member's fitness for duty
 - If necessary to assure proper execution of military mission
 - To carry out any other activity necessary to the proper execution of the mission of the Armed Forces

Permitted Uses & Disclosures

Judicial and Administrative Proceedings

- PHI may be disclosed in response to a
 - Court order or administrative tribunal, provided that the covered entity discloses only the PHI authorized by the order
 - Subpoena, discovery request, or other lawful process, in the absence of a court order

Permitted Uses & Disclosures

Medical Facility Patient Directories

- A MTF may use and disclose the following PHI for purposes of the facility directory
 - Name
 - Location within the facility
 - Condition in general terms
 - Religious affiliation

Permitted Uses & Disclosures

Decedents

- PHI may be disclosed to
 - A coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law
 - Funeral Directors as necessary to carry out their duties with respect to the decedent

Organ/Tissue Donation

- PHI may be disclosed to organ procurement organizations or other entities engaged in the procurement, banking, or transplantations of cadaveric organs, eyes, or tissues, for the purpose of facilitating donation and transplantation

Permitted Uses & Disclosures

Abuse, Neglect, and Domestic Violence

- PHI may be disclosed about an individual believed to be the victim of abuse, neglect, or domestic violence to a government authority authorized by law to receive reports of abuse, neglect, or domestic violence. This section does not apply to reporting of child abuse or neglect, which is covered above
 - Conditions of disclosure
 - Informing the individual

Inmates in Correctional Institutions or In Custody

- A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary

Worker's Compensation

- PHI may be disclosed to the extent necessary to comply with workers' compensation laws or other similar laws that provide benefits for work-related injuries or illness without regard to fault

Permitted Uses & Disclosures

Research

- Documentation of waiver of individual authorization
- Review preparatory to research
- Research on Decedents

Permitted Uses & Disclosures

Public Health Activities

- Prevention/control of diseases, injuries, or disabilities
- Child abuse/neglect
- Communicable diseases
- FDA-regulated products/activities
- Communicable diseases
- Work related illnesses or injuries

Health Oversight Activities (1 of 2)

- PHI may be disclosed to a health oversight agency for oversight activities authorized by law
 - These include:
 - Audits
 - Civil, administrative, or criminal investigations
 - Inspections
 - Licensure or disciplinary actions
 - Civil, administrative, or criminal proceedings or actions
 - Other activities necessary for appropriate oversight of health care systems, government benefit programs, government regulatory programs, and entities subject to civil rights laws for which PHI is necessary for determining compliance

Permitted Uses & Disclosures

Health Oversight Activities (2 of 2)

- Exceptions
 - The receipt of health care;
 - A claim for public benefits related to health; or
 - Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for the benefits or services
- Exceptions to the exception
 - If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation related to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity
 - If a covered entity is also a health oversight agency, the covered entity may use PHI for health oversight agency, the covered entity may use PHI for health oversight activities as permitted by this section

Law Enforcement Purposes

- Reporting certain types of injuries or wounds
- Court ordered warrant, subpoena, or summons Grand jury subpoena
- Administrative Requests
- Locating a suspect, fugitive, material witness, or missing person
- Victims of crimes
- Decedents
- Criminal conduct CE premises
- Medical emergencies

Permitted Uses & Disclosures

Summary

- You should now be able to
 - Identify the 14 uses and disclosures that are allowed under HIPAA without a patient consent
 - Explain the requirements for those individual uses and disclosures

Other Uses & Disclosures

Other Uses & Disclosures

Objectives

- Upon completion of this lesson, you will be able to
 - Identify uses and disclosures for Treatment, Payment, and Health Care Operations
 - Explain procedural requirements for Psychotherapy Notes
 - Identify types of Incidental Uses and Disclosures

Uses and Disclosures for TPO (1 of 3)

- You may use and disclose PHI
 - For your own TPO activities without a patient authorization
 - To another provider for use in treating an individual without a patient authorization
 - To another CE to aide in payment activities without a patient authorization
 - To another DoD CE for use in health care operations without a patient authorization because they are both members of a single OHCA
 - For some but not all healthcare operation activities to a non-OHCA member if you both have an established relationship with the individual

Uses and Disclosures for TPO (2 of 3)

- Those health care operations including but not limited to
 - QA and improvement activities
 - Population based activities relating to improving health or reducing costs
 - Protocol development
 - Case management and care coordination
 - Providing information about treatment alternatives
 - Competence or qualification reviews of health care professionals

Uses and Disclosures for TPO (3 of 3)

- Evaluating provider or practitioner performance
- Health plan performance
- Training programs for health care providers
- Training of non-health care professionals
- Accreditation, certification, licensing, or credentialing activities
- Health care fraud and abuse detection or compliance

Psychotherapy Notes (1 of 2)

- Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the content of conversation during a private counseling session or a group, joint, or family counseling session and that are **separated from the rest of the individual's medical record**

Psychotherapy Notes (2 of 2)

- Authorization is required, except for
 - Treatment, payment and health care operations carried out by
 - the originator of the psychotherapy notes
 - the covered entity for training
 - the covered entity to defend itself in a legal action
 - Uses and disclosures that are
 - required by the Secretary of HHS
 - required by law
 - for healthcare oversight activities
 - about decedents to coroners and medical examiners
 - to avert a serious and imminent threat to the individual or the public

Incidental Uses and Disclosures

- Incidental use or disclosure is permitted **if** you already comply with all of the minimum necessary requirements and have established appropriate administrative, physical, and technical safeguards to protect the privacy of PHI
- Incidental uses and disclosures include
 - Overheard conversations among providers or with patients
 - Sign in sheets and calling patient names in waiting rooms
 - Posting patient names by doors
 - Maintaining a chart by patient's bed
 - Discussing patient's condition during rounds

Other Uses & Disclosures

Summary

- You should be able to
 - Identify uses and disclosures for Treatment, Payment, and Health Care Operations
 - Explain procedural requirements for Psychotherapy Notes
 - Identify types of Incidental Uses and Disclosures

Accounting for Disclosures

Accounting for Disclosures

Objectives

- Upon completion of this lesson, you will be able to account for disclosures
 - Identify documentation requirements
 - Understand the requirements prior to making a disclosure
 - Explain the elements of a valid authorization
 - Identify appropriate authorization documents

Accounting for Disclosures

Requirement

- Individuals shall have the right to receive an accounting of protected health information disclosures made by the military/dental treatment facility during the six years prior to the request, except for disclosures for treatment, payment, and healthcare operations, and disclosures based on a patient authorization
- You are not required to account for disclosures that occurred prior to the April 14, 2003 compliance date

Things to Consider Prior to Making a Disclosure

- Patient notification
- Mutually agreed upon alternative communications
- Mutually agreed upon authorizations
- Potential for serious threat or imminent danger to patient or public
- Authority of requester
- Minimum necessary
- Can information be de-identified
- Documentation

Documenting Disclosures (1 of 2)

- The documentation for each disclosure must include the following
 - The date of disclosure
 - The name of the entity or person who has requested/received the PHI and if known, the address of such entity or person
 - A brief description of the PHI disclosed
 - A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such statement, a copy of a written request for a disclosure, if any

Documenting Disclosures (2 of 2)

- Verification Requirements
 - Covered entities must verify the identity and authority of the individuals seeking disclosure of the PHI
- Minimum Necessary
 - Minimum necessary standard applies to all disclosures made under 45 CFR § 164.512, except those required by law
- Documentation
 - All disclosures/uses must be documented in the individuals record, and most must be accounted for if the individual requests a disclosure

Authorization

- Covered entities must obtain an individual's authorization before using or disclosing PHI for purposes other than TPO
- Covered entities cannot condition the provision of treatment, payment, enrollment or eligibility upon an authorization
- Individuals have the right to request a restriction of the use of their PHI

Elements of Valid Authorizations

- Description of the information to be used or disclosed
- Name of person(s) authorized to make the request
- Name of person(s) to whom the requested use or disclosure may be made
- An expiration date or an expiration event
- Statement of the patient's right to revoke authorization, exceptions to this right and how the patient may revoke the authorization
- Statements that information used or disclosed may be subject to re-disclosure by the recipient and thereby no longer protected under HIPAA
- Signature of the patient and date
- If signed by patient representative, a description of the representative's authority is required

Authorization at Request of MTF

- A covered entity must request authorization from the patient to use or disclose PHI for its own use or disclosure
- In addition to the minimum elements for valid authorization, include
 - Statement that neither treatment, payment, enrollment nor eligibility will be conditioned upon authorization
 - Description of each purpose of the requested use or disclosure
 - Statement that patient may inspect or copy PHI to be used or disclosed
 - Indication of whether use or disclosure of requested information will result in direct or indirect remuneration to the covered entity from the third party

Verification of Requesting Party

- If a request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status is required
- If a request is in writing, request must be on appropriate government letterhead
- If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency such as a contract for services, MOU, or purchase order, that establishes that the person is acting on behalf of the public official

Authorization to Disclose Medical or Dental Information (DD Form 2870)

- An authorization is a written document, signed by the patient, that specifically allows the covered entity to disclose PHI with patient's permission
- Guidelines regarding use of this form are contained in DOD Regulation 6025.18-R
- <http://www.tricare.osd.mil/tmaprivacy/hipaa>



Request to Restrict Medical or Dental Information (DD Form 2871)

- The purpose of this form is to provide the patient with a means to request a restriction on the use and disclosure of his/her protected health information
- Guidelines regarding use of this form are contained in DOD Regulation 6025.18-R
- <http://www.tricare.osd.mil/tmaprivacy/hipaa>



Accounting for Disclosures

Summary

- You should be able to
 - Identify documentation requirements
 - Understand the requirements prior to making a disclosure
 - Explain the elements of a valid authorization
 - Identify appropriate authorization documents

Overview of Draft Policy

Overview of Draft Policy

Objectives

- Upon completion of this lesson, you will be familiar with
 - Medical Tracking System for Members Deployed Overseas
 - Background information of the policy
 - Purpose of the draft policy for accounting disclosure policy for Active Duty personnel
 - Breakdown of the format of the draft policy

Overview of Draft Policy

Title 10 USC §1074f (2004)

- Medical Tracking System for Members Deployed Overseas
 - System Required
 - Elements of System
 - Recordkeeping
 - Quality Assurance

Background and Purpose of Draft Policy

- Services requested exception for deployed forces
 - Administrative requirements difficult to implement
- Legal and regulatory requirements prevent active duty and operational forces from exemption
 - All care for active duty is provided via TMA/MHS, which is considered a covered entity
 - All DoD healthcare providers in the MHS must comply regardless of location
- Ease workload impact of the HIPAA requirements on active duty personnel
- Provide methods to track and account for disclosures during military operations

Overview of Draft Policy

Summary

- You should now be able to
 - Describe the purpose of the draft policy
 - Identify the legal and regulatory requirements
 - Explain the Medical Tracking System For Members Deployed Overseas – Title 10 USC § 1074f
 - List the requirements for documenting disclosures
 - Describe the alternative methods for accounting for disclosures

Presentation Summary

- You should now be able to
 - Define Uses and Disclosures
 - Identify the legal and regulatory requirements
 - Explain requirements of the Minimum Necessary Principle
 - Identify permitted uses and disclosures
 - Describe the special requirements for Psychotherapy Notes
 - Define incidental uses and disclosures
 - Explain the process and requirements for accounting of disclosures
 - Describe the contents of the draft policy

Resources

- DoD 6025.18-R, “DoD Health Information Privacy Regulation”, January 2003
- www.tricare.osd.mil/hipaa/privacy
- privacymail@tma.osd.mil for subject matter questions
- hipaasupport@tma.osd.mil for tool related questions
- Service HIPAA Privacy representatives



HEALTH AFFAIRS



Please fill out your critique

Thanks!

